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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of

Advanced Television Systems and  
Their Impact upon the Existing  
Television Broadcast Service

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MM Docket No. 87-268

To: The Commission - Mail Stop 1170

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**COMMENTS OF THE COMMUNITY BROADCASTERS ASSOCIATION**

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## SUMMARY

There is no reason summarily to destroy an entire industry of as many as 400 active, operating television stations, located throughout the nation, serving small communities and niche markets, with significant minority ownership, creating jobs, and growing more rapidly than any other segment of the broadcasting industry. It does not have to be that way, if the Commission makes up its mind that destruction will not be the result of its efforts.

The Commission must insist on the use of up-to-date engineering techniques by the entire television industry, full power and low power alike, and must not rush to judgment at the auction block by chopping off TV spectrum until the low power problem has been solved. The Commission must re-evaluate power levels, UHF "taboos," terrain shielding, directional antennas, precise frequency offset, emission masks, and every other aspect of the television engineering art.

The Community Broadcasters Association has located some 350-400 operating LPTV stations and will submit evidence of those stations to Mass Media Bureau personnel working on this proceeding. The owners and operators of these stations are worried, frightened, and angry over the death threat hanging over their heads, as are the thousands of families who depend on the LPTV industry for employment. The fact that LPTV was created as a "secondary" service in 1981 does not mean that LPTV can be ignored, because the concept in 1981 was that some LPTV stations would have to change channels and a few might have to go dark, not that draconian steps would be taken that would wipe out an entire industry. The impact of the Commission's digital proposals is worse than the Commission has anticipated, so the problem requires immediate and vigorous attention.

*Polar Broadcasting, Inc. v. FCC*, 3 F.3d 1184 (D.C. Cir. 1984) does not control, as it was decided prior to the enactment of Section 257 of the Telecommunications Act of 1996 and the Small Business Growth and Fairness Act of 1996, both of which clearly direct the Commission to pay attention to, and affirmatively to help, small businesses like the LPTV industry.

These Comments discuss several areas the Commission should address, and they include a Technical Exhibit that discusses in detail modern approaches to engineering that will help achieve more efficient spectrum use and save LPTV stations. They discuss the role of a second channel for TV; the need for Commission oversight of private negotiations; the need to defer spectrum reallocation; technical issues involving determination of power, precise frequency offset, other transmitter characteristics, UHF taboos, advanced techniques for demonstrating no interference, directional antennas and terrain shielding; displacement relief; modified interference standards; non-core channels and an LPTV set-aside; cable issues; the desirability of a penalty for LPTV displacement in the digital allotment algorithm; how full power applications should be handled during the transition; and compensation to LPTV operators who ultimately are forced off the air.

Finally, they discuss the need to create a new class of permanent station for LPTV operators who meet all full power programming and local community presence requirements.

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**COMMENTS OF THE COMMUNITY BROADCASTERS ASSOCIATION**

**Introduction**

1. Why would anyone want summarily to destroy as many as 400 active television broadcast stations -- the heart of the entire low power (LPTV) television industry -- with one swipe of the sword? It makes no sense to shut down so many sources of local television service -- often the only such source -- in small communities in every state of the nation; the broadcast service with the highest minority ownership; the most rapidly growing broadcast service; a service that is creating new jobs every day, including vital entry-level jobs that train young people for further broadcasting careers, instead of eliminating jobs through mergers. The Commission may not "want" to do those things, but what it has proposed in this proceeding runs a real risk of doing all of them. And what for? To force the television industry into a new technical format for which it has only lukewarm enthusiasm, as well as to raise money through spectrum auctions -- in other words, to try to ameliorate the nation's overall budget problems, amassed over decades, by discarding "little guys" of the broadcasting industry, who do not have enough money and lobbying clout to fight the tide.

2. It does not have to be that way, and it must not be that way. But it is not enough for the Commission not to want to destroy LPTV; the Commission must want hard enough not to do it. If the Commission takes a positive approach toward the low power television issue, rolls up its sleeves, and gets to work, insisting on the use of up-to-date engineering techniques by the entire television industry, full and low power alike, and does not rush to judgment at the auction block until the LPTV problem has been solved, it can wind up with a larger-than-ever broadcasting industry, serving more communities than ever before, all on a primary spectrum use basis, and can still repack the spectrum and make some of it available for other uses at the proper time. The Commission must re-evaluate power levels, UHF "taboos," terrain shielding, directional antennas, precise frequency offset, emission masks, and every other aspect of the television engineering art. If old assumptions are challenged and creative approaches are taken, many problems will be alleviated, if not solved.

3. These Comments are filed in response to the Commission's *Sixth Further Notice of Proposed Rule Making* in this proceeding, FCC 96-317, released August 14, 1996, by the **Community Broadcasters Association (CBA)**, the trade association of the nation's LPTV stations. CBA's members represent the most vigorous, fast-growing, and dynamic segment of today's broadcasting industry. These LPTV operators have built their stations often with their own hands, and virtually always with their own money, without bank or Wall Street financing. Their goals are to build viable businesses that serve their local communities. They measure success in audience acceptance and local service, not the value of their stock on Wall Street. Indeed they do not have any stock on Wall Street.

4. The Commission's own reports indicate that there are at least a third more licensed LPTV stations than licensed full power television stations. That statistic has apparently scared many people into believing that the LPTV displacement problem cannot be solved, or at least it cannot be solved easily enough to be worth doing it. In fact, however, there are fewer LPTV stations on the air than the Commission's database shows, and it should be possible to save many, if not all, of them. Finding out how many stations are actually operating and where they are located has been a daunting task, but CBA has attempted to do it. It has located some 350-400 operating LPTV stations, who have submitted written documentation that they are on the air, including the make and serial number of their transmitters. This documentation will be provided to the Mass Media Bureau Staff working on this proceeding. Each sheet of paper that CBA will provide represents a real, television venture, owned and operated by people with hopes and aspirations that must be recognized and addressed.

5. LPTV operators are worried, frightened, and angry over the death threat they face. CBA's telephones are rarely silent these days, as everyone asks "what can we do?" LPTV operators are citizens of this nation as much as anyone else, and they have invested their hearts and life savings into their businesses in pursuit of the American free enterprise dream and in reliance on the protection of their government. Thousands of families depend on the LPTV industry for their livelihood. They are threatened too. Will they receive equal protection of the laws, or will they be forgotten when the auctioneer's gavel slams down with the cry "Sold to the highest bidder!"?

6. The fact that LPTV was created as a "secondary" service in 1981 or that the Court of Appeals upheld that status in *Polar Broadcasting v. FCC*, 3 F.3d 1184 (D.C. Cir. 1984) is



beside the point. Less than two miles from the Commission's offices, the following words, spoken by Thomas Jefferson, are inscribed at the Memorial that bears his name:

I am not an advocate of frequent changes in laws and constitutions, but laws and institutions must go hand in hand with the progress of the human mind...We might as well require a man to wear still the coats which fitted him when a boy as a civilized society to remain ever under the regimen of their...ancestors.

The "coat" that may have fit LPTV in 1981 does not fit any more. Did the industry "get away" from the Commission and grow too fast? No -- the industry is a stunning story of public service and economic success -- the kind of story on which this nation thrives and which it normally rewards. The Commission must recognize what has happened and give LPTV the position in the nation's broadcasting system that it has earned.

7. *Polar Broadcasting* is not dispositive, because there are two key elements that were not considered in that case. One is an examination of the actual distribution of operating LPTV stations. These stations very often are the only local television voice in their community. To destroy them in favor of giving every urban full power station a second channel will clearly trample on the statutory mandate of Section 307(b) of the Communications Act that the spectrum be allocated fairly, efficiently, and equitably throughout the nation. The Commission's proposals at this point are not efficient, and they certainly are not fair or equitable to the LPTV industry. The potential destruction of the television translator service also raises serious 307(b) issues. In addition, *Polar Broadcasting* was decided prior to enactment of Section 257 of the Telecommunications Act of 1996, which became law on February 8, 1996, and the Small Business Growth and Fairness Act of 1996, Public Law 104-121, which became law on March 29, 1996. Those statutes clearly direct the Commission to pay attention to, and affirmatively to help, small businesses and not erect barriers to their growth and development. Virtually

every LPTV operator in the country is a "small business" under any definition ever suggested by the Small Business Administration or the Commission. The Commission must by law affirmatively seek to help these enterprises.

#### Scope of the Problem

8. LPTV stations do everything that full power stations do: they broadcast local, network, and syndicated programming; they broadcast good and bad programming; they laugh and cry; they succeed or fail in a free market economy. As indicated above, CBA has obtained hard evidence that there are some 350-400 LPTV stations that are on the air and originating programming as opposed to simply acting as a translator or rebroadcasting a satellite feed full time. In a very substantial number of cases, LPTV stations broadcast more local programming than their full power counterparts, because they do not have as many network options available to them, and they need local programming to differentiate themselves and to win audiences away from stations with higher power and better signal coverage.

9. It is difficult to determine how many LPTV stations are threatened with displacement by the Commission's proposed digital table of channel allotments, but CBA believes that the Commission has substantially underestimated the damage.<sup>1/</sup> Here are just a handful of examples taken from questionnaires returned by LPTV operators and compiled by CBA's Executive Director:

<u>LPTV Channel</u>	<u>Location</u>	<u>Households Served</u>	<u>Weekly Hours of Local Programs</u>	<u>Specialty Format</u>	<u>Status Under 6th FNPRM</u>
43	Hopkinsville KY	75,000	25	--	Terminated

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<sup>1/</sup> See the attached Technical Exhibit at Section VI.

65	Springfield MA	500,000	15	Span/Ital	Terminated
48	Washington DC	400,000	10-20	Spanish	Terminated
27	Jasper IN	31,000	22	--	Terminated
22	Opelousas LA	60,000	40	--	Terminated
46	Ft. Smith AR	208,000	12	--	Terminated
18	Hilton Head SC	40,000	20	--	Terminated
25	Trenton NJ	100,000	20	--	Terminated
41	Miami FL	420,000	22	Spanish	Terminated
43	Dalton GA	35,000	40	--	Terminated
53	Indianapolis IN	570,000	35	Afric. Am.	Terminated
15	Manhattan KS	55,000	10	--	Terminated
60/66	Portland OR	150,000	15	Spanish	Terminated
41	Effingham IL	100,000	17.5	--	Terminated
43	Topeka KS	70,000	10	--	Terminated
59	Ashland OH	79,000	15	--	Terminated
25	Holly Springs MS	150,000	35	--	Terminated
17	New York NY	3.5 million	15	Korean	Terminated

10. What does the above list mean? Among other things, all Spanish language television in Washington, D.C., will end. Fox Network service to the Topeka, Kansas, ADI will end. The only local television service in Hopkinsville, Kentucky, which provides local coverage of Ft. Campbell, from which troops often come for overseas peacekeeping missions, will end. The third major Spanish language programming source in Miami, Florida, where Spanish is spoken as often as English, will be silenced. Local programming will end in Trenton, the capital of New Jersey, where the Commission and Congress have bent over backwards for a quarter century to bring local television service to rectify the mistake made in 1956 when all the available VHF TV channels were allotted to New York and Philadelphia. Will the public, let alone LPTV operators, understand the "wisdom" of the government when these services disappear? The Section 307(b) implications are obvious. Community after community will lose local transmission service -- often the only such service it has -- to make room for a second channel for each full power station in communities that usually have multiple local services.

That result is not a fair and equitable distribution of frequencies, and Section 307(b) of the Communications Act forbids it.

### Suggested Solutions

11. The *Sixth Further Notice* discusses LPTV at some length and makes several constructive suggestions for addressing the displacement problem. CBA acknowledges those suggestions and very much appreciates the fact that the Commission has shown more recognition of the LPTV spectrum problem here than perhaps it has ever done in any major rule making proceeding in the past. It is clear that the Commission does not have a goal of destroying LPTV and in fact would like to see LPTV survive. However, finding the best solutions that will actually achieve that result will not be easy, and CBA is uncertain of the Commission's resolve in this area. The Commission's proposals for full power allotments have been under study for a decade, and not all of the full power accommodation problems have yet been solved. In the three months available for preparing comments in this proceeding, CBA has only been able to begin the job of finding solutions for the future of LPTV. It will take active government participation to find and make LPTV solutions work. CBA hopes the Commission will participate and will encourage, if not demand, cooperative participation from the full power television industry. CBA will likewise contribute to the effort, but it cannot do it alone. CBA has had positive discussions with Maximum Service Television, Inc. (MSTV), but there is a long way to go before sufficient resources are directed toward the LPTV problem to achieve concrete results. Meanwhile, CBA will discuss several desirable approaches in these Comments. As noted by the Commission in the *Sixth Further Notice*, LPTV operator Island Broadcasting

Company has already demonstrated how the application of these approaches can alleviate the LPTV displacement problem even in New York City, the nation's largest and probably its most spectrum-congested market.<sup>2/</sup>

12. Role of a Second Channel. There is an evident lack of enthusiasm from some full power stations for the expense to which they will be put to build digital facilities, and especially to operate analog and potentially costly digital facilities side-by-side during a transition period. The transition period is also the time when the available spectrum will be under the most pressure; after the transition, it should be easier to accommodate both full power and LPTV stations. To address these concerns, CBA suggests that the role of the transitional second channel be modified in two respects.

13. First, it should be just a "loaner channel" and be returned at the end of the transition. In other words, digital operation at the end of the transition should revert to the original NTSC channel. That arrangement will minimize consumer confusion and will ameliorate long-term channel identification concerns.

14. Second, the Commission should not attempt full service area replication on the temporary loaner channel. Replication of only the NTSC Grade A service area would provide service to all or nearly all of the viewers in the market area where most stations focus their attention. It would reduce the power required for transitional digital operation and thus reduce both financial burdens and potential interference to other full power stations and displacement of LPTV stations. An exception could be made upon a showing by an individual station that Grade B replication should be authorized during the transition because the Grade B contour

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<sup>2/</sup> See Technical Exhibit at Section III.

includes underserved areas that do not receive other comparable signals from nearby markets. At the end of the transitional period, full NTSC Grade B replication could be restored when digital operation reverts to the licensee's original channel.<sup>3/</sup>

15. Role of Private Negotiations. The Commission has suggested that local broadcasters form coordinating committees to engage in private negotiations to resolve conflicts in the assignment of digital channels to broadcasters. Indeed, according to information on the National Association of Broadcasters (NAB) Worldwide Web site, the NAB has already established some ten regional coordinators to work with local broadcasters. While CBA recognizes that government resources are limited and that private negotiation is often a more efficient way to resolve conflicts than public adjudication, there is a significant danger in this instance of the fox guarding the chicken coop. The entire concept is based on the false premise of private ownership of digital channels by established television licensees, when the spectrum is supposed to be owned by the public. It also assumes free cooperation and good faith among broadcasters, when in practice the selection and assignment of digital channels will be driven by highly important business considerations affecting the relative market positions of vigorous competitors.

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<sup>3/</sup> On a more basic level, it is not clear to many CBA members why every full power station should be provided with a second channel for digital use. If a second channel were not allotted for each full power station, then each station could switch from analog to digital service when its own judgment so dictated and could alternate service modes during the transition. The market place, rather than the government, would decide when, or even if, digital television service will commence; no station would have to bear the expense of simultaneous dual-channel operation; and the crunch on LPTV stations would be avoided. The Commission would also escape the Pandora's box of being accused of a spectrum give-away if it gives every full power broadcaster a temporary second channel or being accused of snuffing out free television service if it puts TV spectrum up for auction early on.

Even if full power licensees manage to keep a smile on their face as they bargain over their future survival, LPTV operators will almost certainly come out on the short end of the stick.

16. Private coordinating committees should not be given any authority to make changes in any digital TV assignments unless the committees are required to give notice to, and to be open to participation by, all area broadcasters, including LPTV operators. Any private groups must also be directed to establish a priority for preserving LPTV service; and if any licensee, full or low power, can demonstrate that an alternative digital assignment would result in less harm (interference or displacement) to other stations, there should be presumption in favor of that alternative, even if the recipient of the channel does not endorse the change. Otherwise, the natural incentive to reduce competition will inevitably make it difficult for anyone to participate objectively in the negotiation process. Furthermore, the outcome of any private negotiations must be subject to the review and affirmative approval by the Commission, which is the only entity involved whose sole obligation is advancement of the public interest.

17. Postponing Spectrum Reallocation. The Commission should not reallocate any spectrum away from television broadcasting until more is known about the transition process to digital service, actual field experience is gained with respect to when and how interference is caused and how it can be alleviated, and, most importantly, until the LPTV problem has been solved. CBA has seen an advance draft of the Broadcasters' Caucus comments in this proceeding, and it is clear that all broadcasters -- full and low power alike -- agree that the rush to reallocate is unseemly and ill-advised. There are problems to be solved for everyone, and the spectrum will only increase in value, and thus bring greater auction revenues, over time. It is not fair, equitable, or reasonable to lay the entire nation's budget burdens on the LPTV and

translator industries by chopping off Channels 60-69, which are much more heavily populated by LPTV stations and translators than by full power stations, and leaving all those stations to fend for themselves in a free-for-all scramble for dual-channel operation in a shrinking channel pool. The rush to auction is nothing less than a government grab at the expense of citizens who have positively utilized spectrum and who are serving the public well.

18. More Efficient Use of Spectrum. The Commission has recognized in many contexts in the past two decades the critical importance of using the spectrum more efficiently, in order to accommodate the rapidly increasing demand for the wireless distribution of entertainment and information. From narrowbanding in the land mobile services, to digital compression in the mass media Multichannel Multipoint Distribution Service (MMDS), and elsewhere as well, the Commission has encouraged the rapid introduction of more efficient technologies. It should do the same thing with television broadcasting. Spectrum efficiency has not been a hallmark of NTSC television to date; and while an effort has been made to make digital television more efficient, there are additional steps that should be taken.

a. Determination of Power. LPTV stations are currently subject to a transmitter power output (TPO) limit but no effective radiated power (ERP) limit; yet it is ERP (along with antenna height), not TPO, that determines signal coverage and interference potential. Relative ERP and antenna heights will be especially important in the digital TV environment, as first-adjacent channel operation becomes feasible for the first time if the ratios between desired and undesired signals are kept within specified limits to eliminate interference. Thus LPTV stations should be regulated by ERP rather than TPO and should be permitted to operate with whatever power level is appropriate to minimize



interference -- a level that will depend on whether the LPTV and full power stations are collocated and, if not, how far apart their transmitters are.<sup>4/</sup>

b. Precise Frequency Offset. It is well known that two television transmitters may transmit on the same channel in closer proximity if their frequencies are offset by a specific amount (normally 10 kHz) rather than attempting to operate as close as possible to a common center frequency. The amount of offset can be critical to reducing or eliminating interference. As good frequency stability is much easier to achieve today than it was a half-century ago when the television industry was born, in the 1990's every television station should be required to operate with precise offset, at its own expense, at least when needed to minimize interference from another full or low power station. Further, in an NTSC-DTV adjacent-channel environment, very precise frequency stability is required between an upper channel DTV station and lower channel NTSC station to avoid chroma interference to the NTSC station. The Commission should thus require DTV stations operating first-adjacent above, and collocated or in close proximity to, an LPTV station to use precise frequency control and to match the offset that the LPTV station is required to use.<sup>5/</sup>

c. Other Transmitter Characteristics. Modern transmitter technology will permit the application of other techniques that will minimize the likelihood of interference being caused in practice. These include a tighter emission mask, to minimize out-of-band

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<sup>4/</sup> See Technical Exhibit at Section IV.

<sup>5/</sup> See Technical Exhibit, Sections II and V.

interference, and improved linearity, both of which should be mandated by the Commission.

d. UHF Taboos. It is likely that few UHF taboos, if any, are required any longer in an era of solid-state, sophisticated television receivers. Island Broadcasting Company's previous submissions in this proceeding demonstrate that the present taboo rules are more restrictive than necessary. LPTV stations should immediately be permitted to disregard all signals other than co-channel and first-adjacent channel in finding spectrum if they are displaced, with the LPTV station assuming the risk that it may not cause interference to television reception in actual practice.<sup>6/</sup>

e. Advanced Techniques for Avoiding or Demonstrating No Interference. The *Sixth Further Notice* describes the use by the Commission of directional receive antenna grid analysis, a new method for determining interference effects and ratios, as the basis for the proposed DTV allotment table. This method shows that actual interference would be less than theoretically calculated using conventional methods. The Commission should permit displaced LPTV stations to use the same methodology to show that operation on a proposed new channel would not cause interference to any established station.

f. Directional Antennas and Terrain Shielding. The Commission's recognition of directional antennas and terrain shielding as techniques to reduce interference between stations has already made it possible for many new LPTV stations to be established and for many existing station facilities to be modified. These techniques should continue to be fully recognized and their use expanded. For example, it should be permissible to

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<sup>6/</sup> See Technical Exhibit at Section II.

offer a showing that terrain shielding limits the coverage of a full power station as well as the coverage of a low power station. Furthermore, LPTV stations seeking to demonstrate that they can occupy a channel without causing interference should be permitted to elect to use up-to-date, sophisticated methods of predicting signal coverage, such as the Longley-Rice method.

19. Liberal Displacement Relief. As proposed in the *Sixth Further Notice*, the Commission should continue to facilitate continued service from LPTV stations threatened with displacement by permitting them to apply for any other available channel, on a first-come, first-served basis, without waiting for an application filing window. In a time when extreme pressure may be brought on some LPTV stations, and there may not be enough spectrum to go around, a clear priority must be given to preserving existing service over the establishment of new services of any kind.

20. Modified Interference Standards. As a matter of general principle, interference is of course never desirable. The public is entitled to good over-the-air television reception. Nevertheless, the complete absence of interference would be extremely inefficient and would result in a far less diverse broadcast service than we have today. When spectrum is at a premium and efficiency is important, a balancing process is necessary. With respect to LPTV, CBA notes that the interference requirements in Subpart G of Part 74 of the Commission's Rules are more stringent than the assumptions underlying the fixed mileage-separation requirements for full power stations in Part 73 and this docket. It is no longer justified to impose on LPTV what is essentially a "zero tolerance" interference rule when a lesser standard is imposed on full power stations. The LPTV standard, while it should remain interference-based rather than based

on mileage separations, should be conformed to the assumptions underlying the full power rules. Further, LPTV stations should always be permitted to receive whatever interference they are willing to risk, as long as they do not cause interference beyond what the Rules permit, as interference in practice is often less than in theory, and many LPTV stations operate successfully today in environments that are questionable based on computerized theoretical predictions.<sup>7/</sup>

21. Non-Core Channels and LPTV Set-Aside. The Commission has suggested in the *Sixth Further Notice* that LPTV stations unable to find channels otherwise might be permitted to occupy channels outside whatever "core" remains after reallocation of TV spectrum to other uses, and it might even set aside some channels in the 50-59 range exclusively for LPTV stations. CBA applauds these proposals but observes that they are at best a last resort. CBA vigorously opposes any spectrum reallocation until the LPTV survival problem has been solved. CBA is also not optimistic that LPTV stations can occupy reallocated spectrum on a temporary basis during a transition period, especially if it requires the expense and service disruption of more than one channel change by the LPTV station or it results in an LPTV station having to attract viewers to a region that is otherwise full of non-broadcast users. A set-aside in the Channel 50-59 range might be more realistic, but receiver manufacturers must then be required to continue to include those channels in receivers sold in this country.

22. Cable Carriage. The Commission has suggested that greater incentives for cable systems to carry LPTV stations might help alleviate harm to LPTV stations that are displaced by digital television. CBA wholeheartedly agrees and has for a long time urged the Commission to create incentives for cable carriage through permitting a 20-cent subscriber rate increase in

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<sup>7/</sup> See Technical Exhibit at Section I.

return for adding an LPTV signal (without regard to the number of other channels previously added at 20 cents each) and through establishing reasonable leased access channel rates. However, LPTV is for the most part a free, over-the-air broadcast service; and its fundamental character should not be changed to a wired service any more than full power broadcasters should be banished to wires. Moreover, the cable industry has consistently resisted carrying LPTV stations except where the must-carry law (47 USC Sec. 614) applies. Thus while CBA supports positive incentives, it is skeptical about the efficacy of attempts to compel conduct by unwilling cable operators. The Commission's resources are already sufficiently strained without having to adjudicate more disputes between cable operators and LPTV stations. It should not rely on the cable industry to solve the LPTV problem.

23. Broadcaster Channel Sharing. The concept of two broadcasters sharing the capacity of a 6 MHz channel when one digital signal can deliver four or more "standard definition" (SDTV) program signals is intriguing. LPTV operators should clearly be permitted to enter into private arrangements to have LPTV programming carried through part of the capacity of a full power station's digital facility. However, while it would be nice for full power broadcasters to make SDTV capacity available to displaced LPTV stations, and full power stations should be permitted to do so voluntarily, again to the extent that compelled conduct is involved, CBA is skeptical that the system would work in practice. Litigation would ensue, absorbing great time and financial resources, during which time LPTV operators could be forced out of business.

24. Penalty for LPTV Displacement. Assuming that the Commission proceeds with its plan to assign a second channel to each full power station for digital use, significant progress toward resolving the LPTV problem would be made if the digital channel allotment program

included a penalty for displacing an operating LPTV station. For example, if the current program found two digital channels available for a particular NTSC full power station, it would prefer one that provided 99% digital replication of analog service area and would reject another that provided 98% replication, even if the 99% channel displaced an LPTV station and the 98% channel did not. There is no good reason for that result. Even if a substitute channel can be found for the LPTV station, changing channels is a major project, requiring significant expense (usually including a new, expensive antenna plus transmitter modifications), along with disruption of the business goodwill associated with a change of channel number. Thus even assuming that LPTV stations can survive technically by changing channels, perhaps even two or three times during the digital transition, that approach is often economically unrealistic. Instead, when there is a conflict between LPTV and full power, the first attempt should be to find an alternative digital channel, and one digital channel should be deemed equivalent to another if NTSC service area replication on one channel is within 5% of the other, assuming there are no other serious countervailing considerations. Further, there should be a pool of digital channels in each market, which should be assigned to individual full power stations only when each station is individually ready and firmly committed to construct digital facilities. Not all the stations will construct at the same time, and digital channels that will displace LPTV stations should be assigned from the pool last, never first. In other words, the priorities should be (a) finding digital channels that will not displace LPTV's, (b) displacing LPTV's only as the latest stations to convert come on line with digital service, and (c) displacing LPTV's early on only as a last resort.

25. Freeze on Full Power Applications. In 1987, the Commission imposed a freeze on full power television applications and allotments in the vicinity of 100 urban areas, 52 Fed. Reg. 28346 (July 29, 1987). Moreover, in the *Sixth Further Notice*, the Commission established a cut-off date of October 20, 1996, after which no further NTSC full power applications could be filed. CBA understands that several hundred applications were filed by October 20, including many requesting waivers of the top market freeze. If some of these applications are granted, there will be a substantial disruption of both the proposed digital allotment table and the LPTV industry. CBA urges that priority must be given to preserving established services of all kinds, including LPTV services, and that freeze waivers and applications for new stations should not be granted until a specific effort has been made to minimize damage to LPTV facilities.

26. Compensation. It may be that despite all efforts, some LPTV stations will have to go dark during the digital transition, and their owners will not be able to survive a dark period and resume operation after the transition. In that case, they should be compensated for the loss of their investment. Compensation should not be based on whether an LPTV station operates inside or outside a "core" group of channels, if the "core" concept is adopted. Compensation should also be given for the cost of displacement to another channel, if not in all cases then at least after one displacement. Such compensation could come from the full power station that insists on displacing the LPTV station rather than using a different digital channel; but it appears more appropriate to CBA to have it come from auction revenues, if the Commission proceeds to auction television spectrum despite the obvious reasons not to do so at this early date, as pointed out by CBA and undoubtedly to be pointed out by the Broadcasters Caucus as well.

## The End Result

27. Meaning of "Secondary" Service. LPTV stations have been in existence for some 15 years; and during that time, CBA doubts that more than a half dozen have been displaced with no available substitute channel. This very limited casualty rate demonstrates that there is enough spectrum to accommodate the LPTV industry in the NTSC environment. The extremely high casualty rate that is anticipated as a result of the Commission's having ignored LPTV in structuring its proposed digital allotment table proves that we are now embarking on a journey into a new area that was never contemplated when the Commission decided to make the LPTV service "secondary" when it created the service in 1981. The concept of "secondary" at that time meant that LPTV stations might have to change channels from time to time, and in a few instances, LPTV stations might have to go dark, not that the entire industry would someday be summarily destroyed. LPTV operators who accepted their licenses knowing about "secondary" status cannot be attributed with clairvoyance to anticipate the draconian actions the Commission is now proposing.

28. Unprecedented Destruction of Existing Service. Never before has the Commission summarily wiped out an existing, viable service, broadcast or otherwise, without providing alternative spectrum and/or compensation for displaced users. The migration of point-to-point microwave systems out of spectrum reallocated to Personal Communications Services (PCS), which was accompanied by a guaranty of replacement spectrum and full financial compensation, is the most significant recent example. Even unlicensed Part 15 operations in the 902-928 MHz band were recognized as having important value to the public and were and preserved when the licensed Location and Monitoring service was established in the same band. The Commission must do the same here as it has in the past, making every effort to preserve the maximum



number of LPTV stations and providing for compensation to those for whom survival becomes impossible or who are required to change channels.

29. Migration of LPTV to Digital Service. Furthermore, the crisis now at hand should never arise again. Those LPTV stations that survive the transition should be permitted to migrate to digital operation themselves on any available channel where interference will not be caused, when and as they are ready to do so. As existing service-providers, they should be given access to any available broadcasting spectrum before the general public is permitted to apply. Further, full power broadcasters should be subject to a "use-it-or-lose-it" timetable that allows LPTV operators to apply for digital channels that are first made available, but are not used promptly by full power broadcasters. And most importantly, those LPTV stations that do migrate to digital service should become permanent spectrum occupants after that migration.

30. Creation of New Primary Status Station Class. Indeed, the success of the LPTV industry and the important and widespread services it provides dictate that the entire issue of secondary status be revisited, in both the NTSC and DTV environments. A station that meets an established set of public service requirements, including all programming and local community presence requirements imposed on full power stations, should be eligible to apply for a new class of station with permanent status. Multiple station classes with different power limits have long been the hallmark of both AM and FM licensing. There is no reason not to apply the same concept to television broadcasting and to create a class of TV station under Part 73 of the Rules that is the equivalent of a Class A FM station or a Class C AM station. The creation of such a class of permanent station is clearly within the scope of this proceeding in the digital environment, if not the NTSC environment as well.